IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/03/2004

CORAM

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

SECOND APPEAL No.195 of 1993

1. Arunachalam
2. Periya Natchiar .. Appellants

-Vs-

1. Arasazhavar Ammal
2. Padaga Natchiar .. Respondents

This second appeal is preferred under Sec.100 of the Code of Civil Procedure against the judgment and decree in A.S.No.28 of 1989 on the file of the Sub Court, Tuticorin, dated 14.8.1992 confirming the judgment and decree in O.S.No.404/87 on the file of the District Munsif Court, Kovilpatti, dated 9.2.1989.

!For Appellant : Mr.P.Peppin Fernando

^For Respondents : Mr.V.Shanmugam

:JUDGMENT

What is challenged herein is the judgment of the learned Subordinate Judge, Tuticorin, made in A.S.No.28 of 1989 affirming the judgment of the trial Court in a suit for declaration and consequential reliefs.
2. Necessary facts for the disposal of this appeal are as follows:
The suit property and two other items originally belonged to the three brothers namely Devapiran Pillai, Thothathirinatha Pillai and Ramasamy Pillai. The plaintiffs are the daughters of Devapiran Pillai. Devapiran Pillai executed a registered maintenance deed dated 27.6.19 21 in favour of his sister Gomathy Ammal, giving her a life interest in the suit property, and after her life time, it should go to the three brothers or their legal heirs. Devapiran Pillai died leaving behind the plaintiffs as heirs. Thothathirinatha Pillai died unmarried. The said Gomathy Ammal died in the year 1972. The third defendant alone survived the other two brothers. The third defendant demanded the plaintiffs for partition, and in the ora l partition among the members of the family, the third defendant was given 35 cents in S.No.8 39A/2 and 1.36 acres in S.No.841A/6, and the plaintiffs were given the suit property. The third defendant sold his share to one Samy Naicker and others. The third defendant has no right over the suit property. After the life time of Gomathy Ammal, the property was in the possession and enjoyment of the plaintiffs alone. One Alagiri Ramanujam managed to get patta

in his name in respect of the suit property. On petition by the plaintiffs, the entry in that regard was deleted by the Tahsildar, and patta was issued to the plaintiffs and to the third defendant on the basis of the maintenance deed dated 27.6.1921. Taking advantage of the patta, the third defendant colluded and conspired with the defendants 1 and 2 and brought about a sham and nominal sale deed in the name of the defendants 1 and 2. The third defendant sold the suit property to the defendants 1 and 2. Hence, the plaintiffs were constrained to file the suit for the said reliefs.

3. The suit was resisted by the defendants 1 and 2 stating that the alleged maintenance deed was false; that the plaintiffs' father had no right to execute such a deed; that the said Gomathy Ammal never enjoyed the property pursuant to the deed; that she relinquished her right in the suit property on 18.7.1964; that there was no partition between the plaintiffs and the third defendant; that after the said relinquishment by her, the third defendant alone was entitled to the properties; that the defendants 1 and 2 purchased the same from the third defendant, and they were in enjoyment of the same, and hence, the suit was to be dismissed.

4. The third defendant contested the suit by stating that originally, as per the provisions of the Hindu Succession Act, the plaintiffs had no shares in the suit property; that the third defendant alone was entitled to the property; that Gomathy Ammal executed a release deed dated 18.7.1964 in his favour; that the plaintiffs never enjoyed the suit property; that the third defendant entered into an agreement for Rs.80,000/- and received Rs.4,000/-; that the said sale transaction has not yet been completed, and hence, the suit was to be dismissed.

5. The trial Court framed the necessary issues, tried the suit and decreed the same. On appeal by the defendants 1 and 2, their plea was rejected by the first appellate forum also. Pending the first appeal, the third defendant died, and the plaintiffs were recorded as legal representatives. Thus, this second appeal has been brought forth by the defendants 1 and 2.

6. At the time of admission, the following substantial question of law was formulated by this Court:

"Whether the Courts below were correct in holding that in a oral partition the 3rd defendant relinquished his right over the suit property after receiving 1 acre and 36 cents in Survey No.841/A6 and another 35 cents in Survey No.839/A2 in Nalatinputhur village without rendering any finding on this aspect?"

7. This Court heard the learned Counsel for the appellants and also the learned Counsel for the respondents on those contentions.

8. This Court is of the considered opinion, on hearing the rival submissions and scrutiny of the materials, that the appeal requires an outright rejection by this Court.

9. Admittedly, the suit property originally belonged to the three brothers Devapiran Pillai, Thothathirinatha Pillai and Ramasamy Pillai. The third defendant is the last brother. While so, the eldest brother Devapiran Pillai executed Ex.A1, a deed of maintenance, in favour of their sister Gomathy Ammal under Ex.A1 on 27.6.1921, wherein it has been stated that the said Gomathy Ammal should recover the income from the properties and enjoy the same, and on her death, the properties should go to the heirs of these three brothers. The said Devapiran died in 1944 without marriage. Gomathy Ammal also died in 1972. According to the plaintiff, during the life time of

Gomathy Ammal, the third defendant was demanding for a partition, and accordingly, by way of oral partition, two items were allotted to the third defendant, and the suit property was allotted to the plaintiffs, and the third defendant has executed a sale deed in favour of the defendants 1 and 2 in respect of the suit property, and the defendants 1 and 2 pursuant to the sale, were put in possession, and they have become the owners of the properties. It is the further case of the plaintiffs that the sale deeds are not valid; that on the death of Gomathy Ammal, the plaintiffs as heirs of these three brothers available, are to get the properties, and hence, they are entitled to a declaration. The suit was contested by the defendants 1 and 2 stating that in the oral partition entered into between Gomathy Ammal and the third defendant, the suit property was allotted to the third defendant, pursuant to which he sold the same to the defendants 1 and 2, and thus, they are the owners of the property, and hence, the plaintiffs' claim was to be rejected. Both the Courts below were perfectly correct in rejecting the defence plea.

10. It is not in controversy that the suit property originally belonged to the said three brothers, and the third defendant is the third brother. The eldest brother executed the maintenance deed, which is evident from Ex.A1, giving Gomathy Ammal, their sister, the right for enjoyment of the property and deriving the income therefrom during her life time, and on her death, the property should go to the hands of the heirs of the three brothers. It is not in controversy that Gomathy Ammal died in the year 1972. The defence plea was that during the life time of Gomathy Ammal, when a demand for partition was made by the third defendant, the property was orally partitioned and was handed over to the third defendant, which would be nothing but repugnant to the terms found under Ex.A1, which is admitted by both the parties. That apart, as far as the oral partition and the allotment of shares are concerned, the Courts below have found that it could not be accepted both on facts and in law also. The first and second defendants denied the relief asked for by the plaintiffs by stating that they have purchased the suit property from the third defendant. It is pertinent to point out that the original sale deeds were not placed before the trial Court. The third defendant's heirs have filed a written statement before the trial Court challenging those sale deeds and stating that they were not supported by consideration and not acted upon. The third defendant pending the first appeal died, and the plaintiffs have been recorded as the legal representatives of the third defendant.

11. At this time of the second appeal, the learned Counsel for the appellants would submit that Gomathy Ammal, a female member of the joint family, was given maintenance under Ex.A1 maintenance deed, wherein she was given a life interest, and in view of the provisions under Sec.14(1) of the Hindu Succession Act, it has become absolute in her hands; that on her death, the third defendant became the owner of the property, and hence he was competent enough to execute the sale deed in favour of the defendants 1 and 2. This contention cannot be accepted for more reasons than one. It cannot be stated that she was having any pre-existing right, since she was only a sister, and nowhere, this plea has been taken all along the proceedings; but, this is an invention at the time of the second appeal. Attractive though the contention of the learned Counsel for the appellants may be, it does not stand the scrutiny of law. In the absence of the production of the sale deeds, under which the defendants 1 and 2 claimed their title and that too, when the

sale deeds were challenged by the vendor under those sale deeds namely the third defendant, Gomathi Ammal cannot claim a full-fledged ownership in the property. The Court is of the view that the facts on hand do not warrant application of Sec.14(1) of the Hindu Succession Act. In view of the available evidence, the defence plea has been rejected by both the Courts below and rightly too. Thus, this Court is unable to see any merit in this appeal, and the same is liable to be dismissed.

12. In the result, this second appeal is dismissed, confirming the judgments and decrees of the lower Courts and leaving the parties to bear their costs.

Index: yes
Internet: yes

To:
1. The Subordinate Judge
Tuticorin
2. The District Munsif
Kovilpatti
3. The Record Keeper
V.R. Section
High Court, Madras.

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